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ABSTRACT

The Education Commission of the States (ECS) established a task force to consider the possibility of developing model state legislation for guidance and assistance on how to deal with practices in postsecondary education that could be considered questionable, unethical, or fraudulent in the granting of degrees. As in the past, variety and diversity continue to contribute to the vitality of postsecondary education. Its general availability to virtually all Americans also steadily increases, and this should continue. However, while vitality and availability flourish, there is the danger that questionable practices may exploit the manner in which postsecondary education is offered and conducted. Since the legal responsibility for authorizing the existence and continuation of postsecondary educational institutions, programs, and courses of study rests fundamentally with the states, it follows that a logical step for controlling questionable practices in degree authorization would be the enactment of statutes of amendments of existing state laws for this purpose on certain guidelines or models. This report includes such model legislation, and a list of members of the task force that wrote the legislation. (Author/PG)

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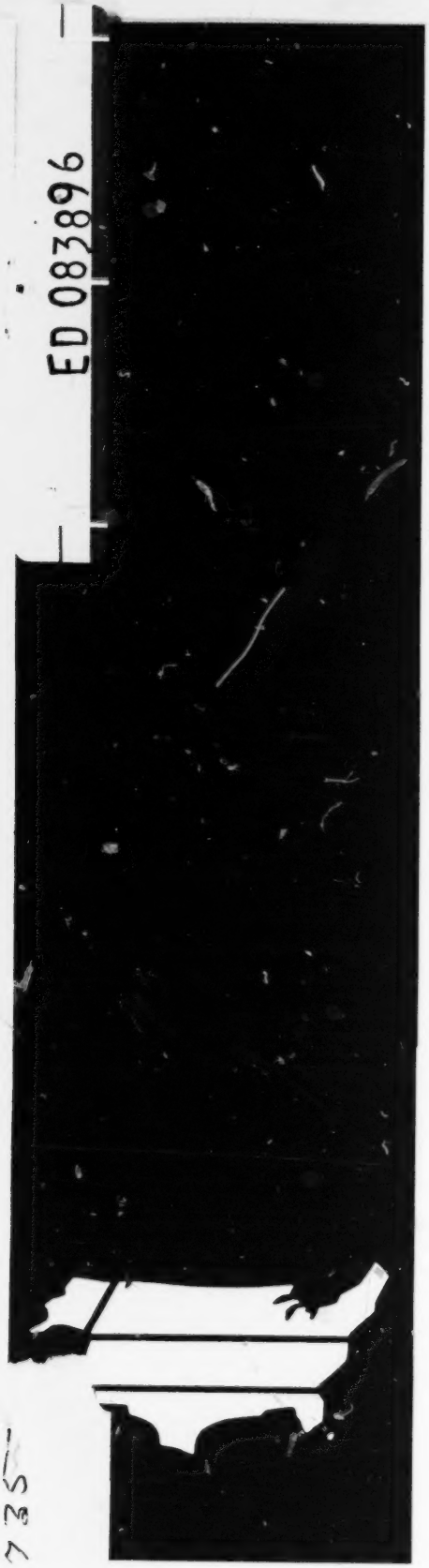

MODEL STATE LEGISLATION

Report of the
Task Force on Model State Legislation for
Approval of Postsecondary Educational Institutions
and Authorization to Grant Degrees

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June, 1973

Report Number 39

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MODEL STATE LEGISLATION

Report of the Task Force on Model State Legislation for Approval of Postsecondary Educational Institutions and Authorization to Grant Degrees

Report No. 39
Education Commission of the States
Denver, Colorado
Wendell H. Pierce, Executive Director

June, 1973

Additional copies of this report may be obtained for $2.00 from the Education Commission of the States, 300 Lincoln Tower, 1860 Lincoln Street, Denver, Colorado 80203, (303) 893-5200

MODEL STATE LEGISLATION

Report of the
Task Force on Model State Legislation for
Approval of Postsecondary Educational Institutions
and Authorization to Grant Degrees

Addenda

1. REFERENCE: Section 6. Minimum Standards. (1)(a)(iv) of Model Legislation; Add to Commentary:

   A requirement that qualifications of students for enrollment in an institution be included in the institution's catalogue was discussed. It was not included in the suggested legislation because such a requirement might be considered as a mandate to establish such qualifications, thereby introducing a barrier to educational innovation by institutions which would like to consider all applicants without regard to formal prerequisites. The Task Force has no desire to dampen innovation in this area, but would suggest that if regulations can be drawn carefully to require disclosure of such qualifications by schools which have strict requirements in this area, while leaving other schools free to experiment with innovative, less rigid admissions requirements, this would be desirable.

2. REFERENCE: Section 6. Minimum Standards. (1)(a)(xii) of Model Legislation; Add to Commentary:

   "Consideration should be given to inclusion in the regulations, as a part of the 'fair and equitable' cancellation policy required of institutions, of a 'cooling-off period,' in which the purchaser of educational services would be given a specified time to reconsider his commitment to purchase, and to cancel if he chose to do so."

3. REFERENCE: Section 19. Violations-Civil-Penalty., and Section 20. Violations-Criminal-Penalty. of Model Legislation; Add to Commentary:

   The Task Force did not undertake to determine specific numbers of dollars or time for penalties, but is in agreement that the penalties shall be severe enough to act as a deterrent to the prohibited acts.

July 31, 1973

FOREWORD

In response to a number of requests from several states, the U.S. Office of Education, the Department of Defense, the Veterans Administration, accrediting agencies, and other sources for guidance and assistance on how to deal with practices in postsecondary education which could be considered questionable, unethical, or fraudulent, the Education Commission of the States (ECS) agreed to establish a Task Force to consider the problems, including the possibility of developing model state legislation. The work of the Task Force was supported in part by a grant from the Federal Interagency Committee on Education--U.S. Office of Education, the Veterans Administration, and the Department of Defense.

The Task Force on Model State Legislation for Approval of Postsecondary Educational Institutions and Authorization to Grant Degrees drew its membership from representatives of the Education Commission of the States, state government, state agencies concerned with different aspects of postsecondary education and its regulation, the Office of Education, major accrediting agencies, postsecondary educational institutions (including complex institutions), and proprietary education. A list of the Task Force members is attached.

I believe, especially with key interests represented on the Task Force, that all the major issues were discussed fully. The model legislation was developed from those deliberations. Noted in the commentary and in the model legislation is the possibility for alternatives. Because of the unique circumstances and traditions among the states, the Task

Force recognizes that variations from its model legislation may--and, in fact, should--occur. The issue of which agency of state government should administer the provisions of tne Act is illustrative. Many would argue for using an existing agency, such as the coordinating or governing board for higher education and postsecondary education in a state or, in some cases, the board of education. Others would argue for the creation of a special commission that for the purposes of the Act would have jurisdiction in relation to all postsecondary educational institutions.

Therefore, recognizing that the function of model legislation is to serve as a guide that may be modified to meet the particular needs of individual states, I am pleased to present this report, including the proposed model legislation and commentary, on behalf of the Task Force and the Education Commission of the States.

The Honorable Tom Jensen
Tennessee State Representative
and House Minority Leader
Task Force Chairman

TASK FORCE ON MODEL STATE LEGISLATION FOR APPROVAL
OF POSTSECONDARY EDUCATIONAL INSTITUTIONS
AND AUTHORIZATION TO GRANT DEGREES

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TASK FORCE ON MODEL STATE LEGISLATION FOR APPROVAL OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND AUTHORIZATION TO GRANT DEGREES

Introduction

Access to postsecondary educational opportunity for all Americans received renewed emphasis at the national level with the passage of the Education Amendments of 1972. Postsecondary education in the United States is varied and diverse in terms of institutions, programs, and courses of study available. The Education Amendments of 1972 permit even greater variety and diversity by encouraging expanded recognition of the institutions and programs that may be considered viable and acceptable at the post-high school level.

As in the past, variety and diversity continue to contribute to the vitality of postsecondary education. Its general availability to virtually all Americans also steadily increases, and this should continue. However, while vitality and availability flourish, there is the danger that questionable, unethical, or fraudulent practices may exploit the manner in which postsecondary education is offered and conducted.

Prior to 1972, the United States Office of Education reported that approximately 2,700 postsecondary institutions were accredited by agencies recognized for this purpose by the Office of Education. In addition, there were about 300 unaccredited colleges and universities in the United States. Of the 300, it was estimated that about 110

could be considered "diploma mills," essentially providing no training or education, but selling degrees for a price. The other 190 may not have satisfied the standards for accreditation but were making honest efforts to meet the required standards.

With the inclusion in the 1972 Amendments of much less restrictive criteria for qualifying for federal funds, an expanded recognition of viable and acceptable postsecondary programs and institutions was encouraged. Thus, rather than 3,000 colleges and universities, current estimates suggest a total of approximately 14,000 institutions and programs comprising the range of postsecondary institutions, including traditional higher educational institutions, postsecondary vocational and technical institutions, and other private and proprietary schools. Accordingly, while the actual number of institutions and programs with questionable, unethical, or fraudulent practices may be small, the leeway for such practices may be greater, and estimates suggest that unsuspecting consumers may be fleeced of several million dollars each year.

Since the legal responsibility for authorizing the existence and continuation of postsecondary educational institutions, programs, and courses of study rests fundamentally with the states, it follows that a logical step for controlling questionable, unethical, or fraudulent practices would be enactment of statutes or amendments of existing state laws for this purpose on certain guidelines or models.

Accordingly, the Education Commission of the States (ECS) Task Force on Model State Legislation for Approval of Postsecondary Educational Institutions and Authorization to Grant Degrees offers the following model for state legislation.

MODEL LEGISLATION

Re: Approval of Postsecondary Educational Institutions and Authorization to Grant Degrees

Text

AN ACT

relating to postsecondary educational institutions, [designating the _____] (an appropriate state education agency) [creating a Commission on Postsecondary Institutional Authorization] and vesting the same with the power to authorize and regulate postsecondary educational institutions and agents thereof in the [State] [Commonwealth] of _____; assigning powers and duties to such agency; regulating the granting of academic degrees and the naming of educational institutions; providing for the preservation of academic records; and for other purposes.

BE IT ENACTED by the Legislature of the [State] [Commonwealth] of _____.

Section 1. Short Title. This Act may be cited as the Postsecondary Educational Authorization Act of 19__.

Section 2. Purposes. It is the purpose of this Act to provide for the protection, education, and welfare of the citizens of the [State] [Commonwealth] of _____, its postsecondary educational institutions, and its students, by:

Commentary

Purposes. Section 2 sets forth the Act's purposes related to protecting citizens, students, and institutions against questionable, unethical, and fraudulent practices (including such practices by institutions referred to as

Text

(a) establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;

(b) prohibiting the granting of false or misleading educational credentials;

(c) regulating the use of academic terminology in naming or otherwise designating educational institutions;

(d) prohibiting misleading literature, advertising, solicitation, or representation by educational institutions or their agents;

(e) providing for the preservation of essential academic records; and

(f) providing certain rights and remedies to the consuming public and the [Agency] [Commission] necessary to effectuate the purposes of this Act.

Section 3. Definitions. As used in this Act:

(a) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, offering

Commentary

"degree mills") through the state's regulatory powers.

Definitions. The critical definition in Section 3 is "postsecondary educational institution." Here the Task Force, in cooperation with the Federal Interagency Committee on Education and the U.S. Office of Education, attempted to develop a sufficiently broad definition to include all operations and programs available to

Text

educational credentials, or offering instruction or educational services (primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance) for attainment of educational, professional, or vocational objectives.

(b) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this [State] [Commonwealth] where, from, or through which, education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

(c) "Authorization to operate" or like term means approval of the [Agency] [Commission] to operate or to contract to operate a postsecondary educational institution in this [State] [Commonwealth].

(d) "To offer" includes, in addition to its usual meanings, advertising, publicizing soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(e) "To grant" includes awarding, selling, conferring, bestowing, or giving.

Commentary

persons of post-high school age. The Task Force chose a broad definition with specific exemptions, rather than a narrow or restrictive definition, to avoid creating loopholes inadvertently.

A broad definition for the representative of a postsecondary educational institution also was recognized as critical. Accordingly, "agent" refers to anyone who receives compensation from an institution and who, on behalf of the institution, attempts to encourage people to attend, enroll, or receive educational credentials from his institution or program.

Text

(f) "Education" or "educational services" or like term includes, but is not limited to, any class, course, or program of training, instruction, or study.

(g) "Agent" means any person owning any interest in, employed by, or representing for remuneration, a postsecondary educational institution within or outside this [State] [Commonwealth], who, by solicitation in any form made in this [State] [Commonwealth], enrolls or seeks to enroll a resident of this [State] [Commonwealth] for education offered by such institution, or offers to award educational credentials, for remuneration, on behalf of any such institution, or who holds himself out to residents of this [State] [Commonwealth] as representing a postsecondary educational institution for any such purpose.

(h) "Agent's permit" means a nontransferable written authorization issued to a natural person by the [Agency] [Commission] which allows that person to solicit or enroll any resident of this [State] [Commonwealth] for education in a postsecondary educational institution.

(i) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports,

Commentary

Text

documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution.

(j) "Entity" includes, but is not limited to, any company, firm, society, association, partnership, corporation, and trust.

(k) Alternative One. ["Agency" means the _____.] (An appropriate state education agency.)

(k) Alternative Two. ["Commission" means the Commission on Postsecondary Institutional Authorization.]

Section 4. Exemptions. The following education and educational institutions are exempted from the provisions of this Act:

(a) Institutions exclusively offering instruction at any or all levels from pre-school through the twelfth grade.

(b) Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the [Agency] [Commission], solely for that organization's

Commentary

Exemptions. While the Act is designed to encompass virtually all of postsecondary education, certain programs are exempted, since the Task Force felt that the possibility of their violating consumer protection would be remote.

Section 4 suggests alternatives for exempting public postsecondary educational insiitutions. Alternative One would exempt all public institutions. Alternative Two would exempt the same

Text

membership, or offered on a no-fee basis.

(c) Education solely avocational or recreational in nature, as determined by the [Agency] [Commission], and institutions offering such education exclusively.

(d) Education offered by eleemosynary institutions, organizations, or agencies, so recognized by the [Agency] [Commission], provided such education is not advertised or promoted as leading toward educational credentials.

(e) Alternative One. [Postsecondary educational institutions established, operated, and governed by this [State] [Commonwealth] or its political subdivisions, as determined by the [Agency] [Commission].]

(e) Alternative Two. [Postsecondary educational institutions established, operated, and governed by this [State] [Commonwealth] or its political subdivisions; provided, however, such institutions meet minimum standards accepted by the [Agency] [Commission] for authorizing all other postsecondary educational institutions of like kind or character.]

Section 5. [_____ Agency.] [Commission on Postsecondary Institutional Authorization.]

Commentary

institutions, but with the condition that they satisfy at least the minimum standards applicable to the non-exempt institutions, as established and enforced by the state agency or commission.

[_____ *Agency*] [*Commission on Postsecondary Institutional Authorization*]. *Section 5 suggests alternatives for*

Text

(1) Alternative One. [Designation. [_____] (an appropriate state education agency) shall administer the provisions of this Act, in addition to its duties presently provided by law; and for the purposes thereof, the [Agency] may hire such personnel as may be necessary, subject to the availability of appropriations. To effectuate the purposes of this Act, the [Agency] may request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the [Agency] to exercise properly its powers and perform its duties hereunder.]

(1) Alternative Two. [Establishment. There is hereby established [The Commission on Postsecondary Institutional Authorization] which shall administer the provisions of this Act, within and subject to the jurisdiction of the _____. The [Commission] may hire such personnel as may be necessary, subject to the availability of appropriations. To effectuate the purposes of this Act, the director may request from any department, division, board, bureau, commission, or other agency of the state, and the same shall provide, such information as will enable the director to exercise properly his powers and perform his duties

Commentary

placing authority in the state government and sets forth the powers and duties of the agency or commission.

The Task Force felt that it would be inappropriate to suggest to the state where governmental authority should be placed for carrying out the provisions of the Act. The designation of an existing agency or commission in the state, or the establishment of a new agency, would depend upon circumstances within the particular state--statutes, constitutional constraints, accepted practice, and political realities.

If an existing agency is designated under Section 5, it should have the capability and experience for using regulatory powers. It should also have an understanding and empathy for the institutions to be regulated. Further, if it is not currently representative of the constituent institutions to be regulated, it should develop an appropriate advisory structure with such representation.

On the other hand, if a new commission is formed, the Act needs to be further expanded to specify methods of selection or appointment of the commission's members, terms of office, provisions for removing members and filling vacancies, and provisions for staff and their functions. These

Text

hereunder.] (See commentary regarding structure of commission and related problems.)

(2) Powers and Duties. The [Agency shall have, in addition to the powers and duties now vested therein by law,] [Commission shall have] the following powers and duties:

(a) To establish minimum criteria in conformity with Section 6 of this Act, including quality of education, ethical and business practices, health and safety and fiscal responsibility, which applicants for authorization to operate, or for an agent's permit, shall meet before such authorization or permit may be issued, and to continue such authorization or permit in effect. The criteria to be developed hereunder shall be such as will effectuate the purposes of this Act, but will not unreasonably hinder legitimate educational innovation.

(b) To receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions and applications for agent's permits.

(c) To maintain a list of postsecondary educational institutions and agents authorized to operate in this [State] [Commonwealth] under the provisions of this Act. Said list shall be available for the information of the public.

Commentary

stipulations would be cited in Section 5, Establishment. The commission should have fair and equitable representation of the various components of postsecondary education and of the public.

Powers and Duties. This part of Section 5 offers specific suggestions concerning the responsibilities that would be given to the agency or commission. Although certain cited powers and duties are self-explanatory, some need comment. For paragraph (a), minimum standards, explanation is offered in Section 6.

Paragraph (d) encourages reciprocity agreements among the states. For example, in some states informal exchanges currently take place in regard to background information on an institution or an agent just starting to do business in a particular state. Some states have adopted formal statements of mutual cooperation in sharing information. The Task Force recommends and encourages these mutual efforts, but cautions that such formal agreement cannot relieve the agency or commission of its authority and responsibility as provided for in the Act, and the state must retain the right to conduct independent inquiry and take independent action where desirable or necessary.

Text

(d) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states, if in the judgment of the [Agency] [Commission] such agreements are or will be helpful in effectuating the purposes of this Act; provided, however, that nothing contained in any such reciprocity agreement shall be construed as limiting the [Agency's] [Commission's] powers, duties and responsibilities with respect to independently investigating or acting upon any application for authorization to operate or any application for renewal of such authorization to operate for a postsecondary educational institution, or an application for issuance of or renewal of any agent's permit, or with respect to the enforcement of any provision of this Act or any of the rules or regulations promulgated hereunder.

(e) To receive and cause to be maintained as a permanent file, copies of academic records in conformity with Section 17 of this Act.

(f) To promulgate rules, regulations, and procedures necessary or appropriate for the conduct of its work and the implementation of this Act, which rules and regulations shall have the force of law; and to hold such hearings as it may deem advisable or as required by law in developing such rules, regulations, and procedures, or in aid

Commentary

Paragraph (e) provides for the preservation of academic records of institutions that cease to exist. To prevent the loss of such records, the agency or commission would have the authority and responsibility for causing the records to be maintained and could legally seize such records if, in its reasonable judgment, that appeared necessary. (See Section 17.)

Text

of any investigation or inquiry.

(g) To investigate as it may deem necessary, on its own initiative or in response to any complaint lodged with it, any person, group, or entity subject to, or reasonably believed by the [Agency] [Commission] to be subject to, the jurisdiction of this Act; and in connection therewith to subpoena any persons, books, records, or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this [State] [Commonwealth]; to require answers in writing under oath to questions propounded by the [Agency] [Commission] and to administer an oath or affirmation to any person in connection with any investigation.

(h) To exercise other powers and duties implied but not enumerated in this Section but in conformity with the provisions of this Act which, in the judgment of the [Agency] [Commission], are determined necessary in order to carry out the provisions of this Act.

Section 6. Minimum Standards.

(1) In establishing the criteria required by Section 5 of this Act, the [Agency] [Commission] shall observe and shall require compliance with the following minimum standards:

Commentary

Minimum Standards. Section 6 sets forth minimum standards that must be included in the criteria developed by the agency or commission for determining whether an institution may operate within the state. Essentially, these criteria

Text

(a) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated, in compliance with the following minimum standards:

(i) That the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered.

(ii) That the institution has adequate space, equipment, instructional materials, and personnel to provide education of good quality.

(iii) That the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study.

(iv) That the institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and such other material facts concerning

Commentary

include consideration of the institution's ability to enable students to reach its educational objectives and assurance that it has the means of doing so. They also encompass adequate, fair, and accurate information for prospective students in regard to the objectives, costs, and conditions involved. The Act requires not only truth in advertising, but also disclosure of relevant information.

Paragraphs (i) through (vi) of Part (1)(a) relate specifically to objectives, facilities, qualifications of staff, information, credentials, and records.

Paragraphs (vii), (viii) and (xi) deal with the minimum standards for the physical and fiscal conditions of the institution, including protection of the consumer in terms of health, safety, and fiscal responsibility.

Paragraph (iv) establishes the minimum informational disclosure items that should be available about the institution or educational program and should be read in conjunction with paragraph (ix), relating to disclosure practices which are false, deceptive, misleading, or unfair.

Part (1)(b) sets forth the conditions to be satisfied by any applicant for an agent's permit,

Text

the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by the [Agency] [Commission] and/or defined in the rules and regulations; and that such information is provided to prospective students prior to enrollment.

(v) That upon satisfactory completion of training, the student is given appropriate educational credentials by said institution, indicating that said course or courses of instruction or study have been satisfactorily completed by said student.

(vi) That adequate records are maintained by the institution to show attendance, progress, or grades, and that satisfactory standards are enforced relating to attendance, progress, and performance.

(vii) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises.

(viii) That the institution is financially sound and capable of fulfilling its commitments

Commentary

and specifies that among these conditions is that the institution he represents must satisfy the minimum standards as proposed in the Act or set forth by the agency. Accordingly, any person receiving an agent's permit, as defined in Section 9, would be representing an institution or program conforming to at least the minimum standards established in the Act and enforceable by the agency or commission.

Part (2) permits the agency or commission to accept accreditation of an institution by an accrediting agency approved by the U.S. Commissioner of Education as evidence of the institution's conformance to the minimum standards set forth in the Act or by the agency. However, the use of such accredited status is permissive, not mandatory, and the state agency may require additional evidence or may undertake its own investigation if it so desires or the circumstances warrant. While the Task Force sanctions the use of accreditation status as possible evidence of compliance with statutory minimum standards, it does not intend that the agency or commission abrogate its statutory responsibility through substitution of accreditation for independent review and action.

Text

to students.

(ix) That neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair.

(x) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character.

(xi) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate.

(xii) That the institution has a fair and equitable cancellation and refund policy.

(b) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a postsecondary educational institution or institutions which meet the minimum standards established in this Section 6 and the criteria established under Section 5 of this Act.

(2) Accreditation by national or regional accrediting agencies recognized by the United States Office of Education may be accepted by the [Agency] [Commission] as evidence of compliance with the minimum standards established hereunder and the criteria to be established

Commentary

Text

under Section 5 of this Act; provided, the [Agency] [Commission] may require such further evidence and make such further investigation as in its judgment may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

Section 7. Prohibition. No person, agent, group, or entity of whatever kind, alone or in concert with others, shall:

(a) Operate in this [State] [Commonwealth] a postsecondary educational institution not exempted from the provisions of this Act, unless said institution has a currently valid authorization to operate issued pursuant to the provisions of this Act.

(b) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from the provisions of this Act, whether such institution is within or outside this [State] [Commonwealth], unless such agent is a natural person and has a currently valid agent's permit issued pursuant to the provisions of this Act, nor accept contracts

Commentary

Prohibition. Section 7 cites practices by institutions or their agents that are specifically prohibited by the Act. A resident institution cannot operate within the state without authorization to do so, nor may an agent without a permit operate within the state, whether representing an out-of-state or resident institution. Neither an institution nor its agent may operate or solicit in the state unless the institution meets the minimum standards set forth in the Act. Thus, although out-of-state institutions are not required prior to soliciting in a state to apply for an "authorization to operate," when they do solicit, they immediately become subject to the jurisdiction of the courts within that state, and may be enjoined if they fail to meet the minimum standards required under the Act.

Text

Commentary

or enrollment applications from an agent who does not have a current permit as required by this Act; provided, however, that the [Agency] [Commission] may promulgate rules and regulations to permit the rendering of legitimate public information services without such permit.

(c) Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, in this [State] [Commonwealth], whether such person, agent, group, or entity is located within or without this [State] [Commonwealth], unless such person, agent, group, or entity observes and is in compliance with the minimum standards set forth in Section 6 (1) of this Act, the criteria established by the [Agency] [Commission] pursuant to Section 5 (2)(a) hereof, and the rules and regulations adopted by the [Agency] [Commission] pursuant to Section 5 (2)(f) hereof.

(d) Use the term "university" or "college" without authorization to do so from the [Agency] [Commission].

Text

(e) Grant, or offer to grant, educational credentials, without authorization to do so from the [Agency] [Commission].

Section 8. Authorization to Operate.

(1) Each postsecondary educational institution desiring to operate in this [State] [Commonwealth] shall make application to the [Agency] [Commission], upon forms to be provided by the [Agency] [Commission]. Said application shall be accompanied by a catalog or brochure published, or proposed to be published by the institution, containing the information specified in Section 6 (1)(a)(iv) of this Act, including information required by rules and regulations of the [Agency] [Commission]. Said application shall also be accompanied by evidence of a surety bond as required by this Act, and payment of the fees specified herein.

(2) Following review of such application and any further information submitted by the applicant, or required by the [Agency] [Commission], and such investigation of the applicant as the [Agency] [Commission] may deem necessary or appropriate, the [Agency] [Commission] shall either grant or deny authorization to operate to the applicant. A grant of authorization to operate may be on such terms and conditions as the [Agency] [Commission] may specify.

Commentary

Authorization to Operate. Agent's Permit. Sections 8 and 9 develop the procedures and conditions for obtaining or renewing the institution's authorization to operate and the agent's permit.

Text

(3) The authorization to operate shall be in a form recommended and approved by the [Agency] [Commission] and shall state in clear and conspicuous manner at least the following information:

(a) The date of issuance, effective date, and term of approval.

(b) The correct name and address of the institution so authorized.

(c) The authority for approval and conditions thereof.

(d) Any limitation of the authorization, as deemed necessary by the [Agency] [Commission].

(4) The term for which authorization is given shall not extend for more than [one] [two] years, and may be issued for a lesser period of time.

(5) The authorization to operate shall be issued to the owner, or governing body, of the applicant institution, and shall be nontransferable. In the event of a change in ownership of the institution, a new owner, or governing body, must, within ten (10) days after the change in ownership, apply for a new authorization to operate, and in the event of failure to do so, the institution's authorization to operate shall terminate. Application for a new authorization

Commentary

Text

Commentary

to operate by reason of change in ownership of the institution shall for purposes of Section 10 (2) of this Act, be deemed an application for renewal of the institution's authorization to operate. "Ownership" for purposes of this section shall be deemed to mean ownership of a controlling interest in the institution, or in the event the institution is owned or controlled by a corporation or other legal entity other than a natural person or persons, ownership of a controlling interest in the legal entity owning or controlling such institution.

(6) At least sixty (60) days prior to the expiration of an authorization to operate, the institution shall complete and file with the [Agency] [Commission] an application form for renewal of its authorization to operate. Said renewal application shall be reviewed and acted upon as provided hereinabove.

(7) An institution not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization. An institution in operation when its application for authorization to operate is filed may continue operation until its application is acted upon by the [Agency] [Commission], and thereupon its authority to operate shall be

Text

governed by the action of the [Agency] [Commission]. In any event, the [Agency] [Commission] may issue provisional authorization to operate, containing such limitations as to time, procedures, functions, or other conditions as the [Agency] [Commission] may deem necessary.

Section 9. Agent's Permit.

(1) Each person desiring to solicit or perform the services of an agent, as herein defined, in this [State] [Commonwealth], shall make application to the [Agency] [Commission], upon forms to be provided by said [Agency] [Commission]. Said application shall be accompanied by evidence of the good reputation and character of the applicant, in a form to be prescribed by the [Agency] [Commission], and shall state the institution or institutions which the applicant intends to represent. An agent representing more than one institution must obtain a separate agent's permit for each institution represented; provided, that when an agent represents institutions having a common ownership, only one agent's permit shall be required with respect to said institutions. In the event any institution which the applicant intends to represent does not have authorization to operate in this [State]

Commentary

Text

[Commonwealth], said application shall be accompanied by the information required of institutions making application for such authorization. Said application for an agent's permit shall also be accompanied by evidence of a surety bond as required by this Act, and payment of the fees specified herein.

(2) Following review of such application and any further information submitted by the applicant, or required by the [Agency] [Commission], and such investigation of the applicant as the [Agency] [Commission] may deem necessary or appropriate, the [Agency] [Commission] shall either grant or deny an agent's permit to the applicant.

(3) The agent's permit shall be in a form recommended and approved by the [Agency] [Commission] and shall state in a clear and conspicuous manner at least the following information:

(a) The date of issuance, effective date, and term.

(b) The correct name and address of the agent.

(c) The institution or institutions which such agent is authorized to represent.

(4) The term for which an agent's permit is issued shall not extend for more than [one] [two]

Commentary

Text

years, and may be issued for a lesser period of time.

(5) At least sixty (60) days prior to the expiration of an agent's permit, the agent shall complete and file with the [Agency] [Commission] an application form for renewal of said permit. Said renewal application shall be reviewed and acted upon as provided hereinabove.

Section 10. Denial of Authorization to Operate or Agent's Permit.

(1) If the [Agency] [Commission], upon review and consideration of an application for authorization to operate, or for an agent's permit, or for renewal thereof, shall determine that the applicant fails to meet the criteria established as provided in this Act, the [Agency] [Commission] shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

(2) The [Agency] [Commission] may grant to an applicant for renewal an extension of time of reasonable duration in which the applicant may eliminate the reason or reasons for denial contained in the statement of denial, if the applicant has demonstrated to the satisfaction of the [Agency] [Commission] its or his desire to meet

Commentary

Denial of Authorization to Operate or Agent's Permit. [Agency] [Commission] Review. Revocation of Authorization to Operate or Agent's Permit. Sections 10, 11, and 12 are designed to establish safeguards and due-process requirements in connection with applications for authorization to operate, agent's permits, and renewals thereof.

Text

the requirements of Section 6 of this Act and the criteria established pursuant to Section 5 of this Act, and if in the judgment of the [Agency] [Commission], it would be reasonably possible for the applicant to meet said requirements and criteria within such time.

(3) In the event the [Agency] [Commission] denies an application for an agent's permit, or for renewal thereof, it shall notify the institution or institutions which said agent represented or proposed to represent, according to the records of the [Agency] [Commission], including the reasons therefor.

Section 11. [Agency] [Commission] Review. Any person aggrieved by a decision of the [Agency] [Commission] respecting denial of an authorization to operate, or of an agent's permit, or the placing of conditions thereon, whether on initial application or on application for renewal, and any person aggrieved by the imposition of a penalty by the [Agency] [Commission] under Section 19 of this Act, shall have the right to a hearing and review of such decision by the [Agency] [Commission] as provided herein.

(a) If, upon written notification of any such action taken by the [Agency] [Commission], the aggrieved party desires a hearing and review,

Commentary

Text

such party shall notify the [Agency] [Commission], in writing, within ten (10) days after the giving of notice of such action, otherwise said action shall be deemed final.

(b) Upon receiving such notice from the aggrieved party, the [Agency] [Commission] shall fix the time and place for a hearing, and shall notify the aggrieved party thereof.

(c) At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and present evidence in opposition or in extenuation. The hearing shall be conducted in accordance with the [Administrative Code of this [State] [Commonwealth]] [Rules of Civil Procedure of this [State] [Commonwealth]]. Any member of the [Agency] [Commission] may preside except where a clear conflict of interest may be demonstrated.

(d) A decision of the [Agency] [Commission] following hearing, or on expiration of the time for demand of a hearing if no such demand is filed, shall be deemed final, subject to the right of judicial review provided hereinafter. All matters presented by hearing as provided herein shall be acted upon promptly by the [Agency] [Commission], and the [Agency] [Commission] shall notify all parties in writing of its decision,

Commentary

Text

which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing, and the appropriate rule, order, sanction, relief, or denial thereof.

Section 12. Revocation of Authorization to Operate or Agent's Permit.

(1) An authorization to operate or an agent's permit may be revoked or made conditional after its issuance if the [Agency] [Commission] has reasonable cause to believe that the holder of said authorization or permit has violated or is violating this Act or any rules and regulations promulgated hereunder. Prior to such revocation or imposition of condition, the [Agency] [Commission] shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder of a permit that if hearing is requested, in writing, within ten (10) days of receipt of said notice, the [Agency] [Commission] shall set a time and place for a hearing at which the holder of the authorization or permit may be heard in response to the allegation of non-compliance with the provisions of this Act.

Commentary

Text

(2) If a hearing is requested as aforesaid, such hearing shall be conducted as provided in Section 11(c) of this Act, and the holder of the authorization or permit shall have the rights set forth therein. The decision of the [Agency] [Commission] shall be made as provided in Section 11(d) of this Act, and shall be deemed final, subject to the right of judicial review provided hereinafter. In the event an agent's permit is revoked or condition imposed thereon, the [Agency] [Commission] shall notify the institution or institutions which said agent was permitted to represent, as shown in the records of the [Agency] [Commission], in addition to the notice required to be given to the agent and any other parties to the hearing.

Section 13. Complaints of Violations.

(1) Any person claiming damage or loss as a result of any act or practice by a postsecondary educational institution or its agent, or both, which is a violation of this Act or of the rules and regulations promulgated hereunder, may file with the [Agency] [Commission] a verified complaint against such institution or against its agent or both. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the [Agency] [Commission].

Commentary

Complaints of Violations. Section 13 provides that people who believe that they have been victimized by postsecondary institutions or agents may have a place to go to file a complaint--and that if relief or restitution for loss or damage caused by the acts complained of is justified, in the judgment of the agency or commission, it can award the person such relief. Also, based on the complaint, the agency or commission may initiate an investigation into the activities of the institution or agent. If it finds such complaint

Text

A complaint may also be filed by [Director of Agency] [Commissioner] or the Attorney General with the [Agency] [Commission]. A complainant may also file with the [Agency] [Commission] as a representative of a class of complainants.

(2) The [Agency] [Commission] shall investigate any such complaint and may, at its discretion, attempt to effectuate a settlement by persuasion and conciliation. The [Agency] [Commission] may consider a complaint after ten (10) days written notice by registered mail, return receipt requested, to such institution or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon. Such hearing shall be conducted in accordance with the [Administrative Code of this [State] [Commonwealth]] [Rules of Civil Procedure of this [State] [Commonwealth]].

(3) If, upon all the evidence at a hearing, the [Agency] [Commission] shall find that a post-secondary educational institution or its agent, or both, has engaged in or is engaging in, any act or practice which violates this Act or the rules and regulations promulgated hereunder, the [Agency] [Commission] shall issue and cause to be served upon such institution or agent or both, an order requiring such institution or agent or both to cease and desist from such act or practice.

Commentary

justified, it may order the act or practice to cease, impose penalties on the institution or the agent, or revoke an institution's authorization to operate or an agent's permit.

Text

Additionally, if the [Agency] [Commission] shall find that the complainant, or class of complainants, has suffered loss or damage as a result of such act or practice, the [Agency] [Commission] may, at its discretion, award the complainant, or class of complainants, full or partial restitution for such damage or loss and may impose the penalties provided for in Section 19 hereof. The [Agency] [Commission] may also, as appropriate, based on its own investigation and/or the evidence adduced at such hearing, commence an action to revoke an institution's authorization to operate or an agent's permit.

Section 14. Judicial Review. Any person aggrieved or adversely affected by any final [Agency] [Commission] action, or by any penalty imposed by the [Agency] [Commission], may obtain judicial review of such action as provided in this section.

(a) An action for judicial review may be commenced in any court of competent jurisdiction in accordance with the [Rules of Civil Procedure] within thirty (30) days after such [Agency] [Commission] action becomes effective.

(b) Upon a finding that irreparable injury would otherwise result, the [Agency] [Commission],

Commentary

Judicial Review. Section 14 elaborates on due process for the institutions and agents, as well as for student consumers, by providing court review of agency or commission action.

Text

upon application therefor, shall postpone the effective date of its action pending judicial review, or the reviewing court, upon application therefor, and upon such terms and upon such security, if any, as the court shall find necessary, shall issue appropriate process to postpone the effective date of the [Agency's] [Commission's] action or to preserve the rights of the parties pending conclusion of the review proceedings.

(c) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the [Agency] [Commission], and the decision, findings, and action of the [Agency] [Commission]. As to alleged procedural irregularities, evidence may be taken independently by the court.

(d) If the court finds no error, it shall affirm the [Agency's] [Commission's] action. If it finds that such action was arbitrary or capricious, a denial of statutory right, contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, purposes, or limitation, not in accord with the procedures or procedural limitations of this Act, or otherwise required by law, an abuse

Commentary

Text

or clearly unwarranted exercise of discretion, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the [Agency] [Commission] action, and afford such relief as may be appropriate.

(e) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

Section 15. Bonds Required.

(1) At the time application is made for authorization to operate, or for renewal thereof, the [Agency] [Commission] may require the post-secondary educational institution making such application to file with the [Agency] [Commission] a good and sufficient surety bond in such sum as may be determined by the [Agency] [Commission]. Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this [State] [Commonwealth]. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this Act by

Commentary

Text

said postsecondary educational institution, and that the bonding company shall pay any final, non-appealable judgment rendered by the [Agency] [Commission] or any Court of this [State] [Commonwealth] having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond may be continuous.

(2) An application for an agent's permit shall be accompanied by a good and sufficient surety bond in a penal sum of $_____. Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this [State] [Commonwealth]. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for said institution in a penal sum of $_____. The bond shall be conditioned to provide indemnification to any student, enrollee, or his or her parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this Act by said agent, and that the bonding company shall pay any

Commentary

Text

Commentary

final, non-appealable judgment rendered by the [Agency] [Commission] or any Court of this [State] [Commonwealth] having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond may be continuous.

(3) The surety bond to be filed hereunder shall cover the period of the authorization to operate or the agent's permit, as appropriate, except when a surety shall be released as provided herein. A surety on any bond filed under the provisions of this section may be released therefrom after such surety shall serve written notice thereof to the [Agency] [Commission] _____ days prior to said release; but said release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this Act alleged to have occurred while said bond was in effect, nor for an institution's ceasing operations during the term for which tuition has been paid while said bond was in force.

(4) Authorization for an institution to operate and an agent's permit shall be suspended by

Text

operation of law when said institution or agent is no longer covered by a surety bond as required by this section; but the [Agency] [Commission] shall cause said institution or agent, or both, to receive at least thirty (30) days written notice prior to the release of the surety, to the effect that said authorization or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

Section 16. Fees. All fees collected pursuant to the provisions of this Act shall be deposited in the [State Treasury] to the credit of the general fund, and no fees collected under the provisions of this Act shall be subject to refund. The fees to be collected by the [Agency] [Commission] hereunder shall accompany an application for authorization to operate or an agent's permit, in accordance with the following schedule:

(a) The initial application fee for post-secondary educational institutions shall be $_____.

(b) The [annual] renewal fee for a post-secondary educational institution shall be $_____.

(c) The initial fee for an agent's permit shall be $_____.

Commentary

Text

(d) The [annual] renewal fee for an agent's permit shall be $_____.

Section 17. Preservation of Records. In the event any postsecondary educational institution now or hereafter operating in this [State] [Commonwealth] proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the [Agency] [Commission] the original or legible true copies of all such academic records of such institution as may be specified by the [Agency] [Commission]. Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study; and, as a separate document, the academic record of each former student. In the event it appears to the [Agency] [Commission] that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the [Agency] [Commission], the [Agency] [Commission] may seize and take possession of such records, on its own motion, and without order of court. The [Agency] [Commission] shall maintain or cause to be maintained a permanent file of such records coming into its possession.

Commentary

Preservation of Records. Section 17 is included in the Act to insure availability of academic records for students who may need them at a later date. The Act authorizes the agency or commission to preserve or cause to be preserved academic records at institutions that cease to exist, as well as to seize such records if they are in danger of being destroyed, secreted, or otherwise made unavailable.

Text

Section 18. Enforceability of Notes, Contracts, Etc.

(1) If the person to whom educational services are to be rendered or furnished by a post-secondary educational institution is a resident of this [State] [Commonwealth] at the time any contract relating to payment for such services, or any note, instrument, or other evidence of indebtedness relating thereto, is entered into, the provisions of this section shall govern the rights of the parties to such contract or evidence of indebtedness. In such event the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

(a) That the law of another state shall apply;

(b) That the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;

(c) That another person is authorized to confess judgment on such contract or evidence of indebtedness;

(d) That fixes venue.

(2) No note, instrument or other evidence of indebtedness, or contract relating to payment for

Commentary

Enforceability of Notes, Contracts, Etc. Part (1) of Section 18 is designed to end a common practice of unscrupulous out-of-state institutions that may obtain judgments for tuition or other charges in their own states against students from other states. Under such circumstances, the student is often unable adequately to defend the suit.

Parts (3), (4), and (5) would prevent use of the "holder in due course" doctrine, under which an institution might otherwise use a third party to collect payments from a student for services not yet provided and which may never be provided. These provisions of the Act would permit the student to assert any defenses he might have in a suit to collect the institution's charges.

Text

education or educational services shall be enforceable in the courts of this [State] [Commonwealth] by any postsecondary educational institution operating in this [State] [Commonwealth] unless said institution shall have received authorization to operate under the provisions of this Act; nor by any postsecondary educational institution having an agent or agents in this [State] [Commonwealth] unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had an agent's permit at the time of their contact with such person.

(3) For purposes of this section, "lending agency" shall mean any postsecondary educational institution, or any person, group, or entity controlling, controlled by, or held in common ownership with, such institution, or regularly loaning money to, or to students of, such institution.

(4) Any lending agency extending credit or loaning money to any person for tuition, fees, or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by said institution, shall cause any note, instrument, or

Commentary

Text

other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face therof, "Student Loan." In the event such lending agency fails to do so, it shall be liable for any loss or damage suffered or incurred by any subsequent assignee, transferee, or holder of such evidence of indebtedness on account of the absence of such notation.

(5) Notwithstanding the presence or absence of such notation, and notwithstanding any agreement to the contrary, the lending agency making such loan or extending such credit, and any transferee, assignee, or holder of such evidence of indebtedness shall be subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render or furnish such services or facilities, by any party to said evidence of indebtedness or by the person to whom such services or facilities were to be rendered or furnished, up to the amount remaining to be paid thereon.

Section 19. Violations-Civil-Penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who shall violate the provisions of Section 7 of this Act, or who shall fail or refuse to deposit with the [Agency] [Commission] the records required by Section 17 of this

Commentary

Violations-Civil-Penalty/ Violations-Criminal-Penalty. Civil penalties for violations of the Act (Section 19) may be imposed by the agency or commission or by a court, whereas criminal penalties (Section 20) may be imposed only by a court.

Text

Act, shall be subject to a civil penalty not to exceed $_____ for each violation. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such fine may be imposed by the [Agency] [Commission] in an administrative proceeding or by any court of competent jurisdiction.

Section 20. Violations-Criminal-Penalty. Any person, group, or entity, or any owner, officer, agent, or employee thereof, who shall willfully violate the provisions of Section 7 of this Act, or who shall willfully fail or refuse to deposit with the [Agency] [Commission] the records required by Section 17 of this Act, shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed $_____, or by imprisonment in the county jail not to exceed _____ months, or by both such fine and imprisonment. Each day's failure to comply with the provisions of said sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the Attorney General of this [State] [Commonwealth] or a District Attorney pursuant to Section 22 hereof.

Section 21. Jurisdiction of Courts; Service of Process. Any postsecondary educational institution not exempt from the provisions of this Act,

Commentary

Jurisdiction of Courts; Service of Process. Section 21 would make postsecondary institutions, wherever located, subject

Text

whether or not a resident of or having a place of business in this [State] [Commonwealth], which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this [State] [Commonwealth], whether such instruction or services are provided in person or by correspondence, to a resident of this [State] [Commonwealth], or which offers to award or awards any educational credentials to a resident of this [State] [Commonwealth], submits such institution, and, if a natural person his personal representative, to the jurisdiction of the courts of this [State] [Commonwealth], concerning any cause of action arising therefrom, and for the purpose of enforcement of this Act by injunction pursuant to Section 22 hereof. Service of process upon any such institution subject to the jurisdiction of the courts of this [State] [Commonwealth] may be made by personally serving the Summons upon the defendant within or outside this [State] [Commonwealth], in the manner prescribed by the [Rules of Civil Procedure] of this [State] [Commonwealth], with the same force and effect as if the Summons had been personally served within this [State] [Commonwealth]. Nothing contained in this section shall limit or affect the right to serve any process

Commentary

to the jurisdiction of the courts of states enacting this proposed legislation, if such institutions provided or solicited to provide education to residents of the enacting state. The section has two main purposes: (1) To enable an individual dealing with the institution to bring suit in his own state, rather than having to go to the state where such institution was located, and (2) to enable the agency or commission to obtain an injunction against fraudulent or deceptive practices of the institution, or against other practices of the institution that violated the Act.

Text

as prescribed by the [Rules of Civil Procedure] of this [State] [Commonwealth].

Section 22. Enforcement; Injunction.

(1) The Attorney General of this [State] [Commonwealth], or the District Attorney of any district in which a postsecondary educational institution or an agent thereof is found, at the request of the [Agency] [Commission] or on their own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to Section 20 hereof) in any court of competent jurisdiction for the enforcement of the provisions of this Act.

(2) Whenever it shall appear to the [Agency] [Commission] that any person, agent, group, or entity is, is about to, or has been violating any of the provisions of this Act or any of the lawful rules, regulations, or orders of the [Agency] [Commission], the [Agency] [Commission] may, on its own motion or on the written complaint of any person, file a petition for injunction in the name of the [Agency] [Commission] in any court of competent jurisdiction in this [State] [Commonwealth] against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this Act, and all rules, regulations, and orders issued

Commentary

Text

hereunder. It shall not be necessary that the [Agency] [Commission] allege or prove that it has no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the [Agency] [Commission] has, and shall be in addition to any right of criminal prosecution provided by law; provided, however, the [Agency] [Commission] shall not obtain a temporary restraining order without notice to the person, group, or entity affected. The existence of [Agency] [Commission] action with respect to alleged violations of this Act shall not operate as a bar to an action for injunctive relief pursuant to this Section.

Section 23. Funding. [Note: Appropriations or authorizations therefor should be provided for as appropriate.]

Section 24. Severability. In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect, as if the section, subsection, sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The state

Commentary

Text

legislature hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

Section 25. Effective Date. For the purpose of making the necessary preparations to implement the provisions of this Act, it shall become effective, _____, but for all other purposes, this Act shall become effective _____.

Section 26. Repealer. [Note: [State] [Commonwealth] should determine which, if any, laws are in conflict with this Statute and should be repealed.]

Commentary